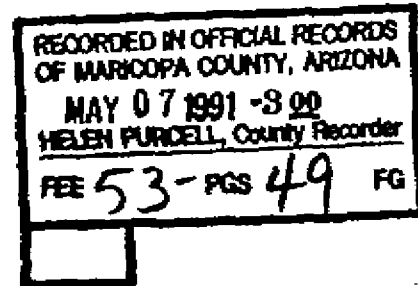


FIRST SERVICE TITLE AGENCY, INC.

When recorded, return to:

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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
WARNER RANCH PHASE 3

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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
WARNER RANCH PHASE 3**

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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
WARNER RANCH PHASE 3**

This Declaration of Covenants, Conditions and Restrictions is made as of the 6 day of May, 1991, by REALTY DEALERS, LTD., an Illinois limited partnership, as "Declarant," with reference to the following:

A. As of the date hereof, Declarant is the owner of fee title to the Property.

B. Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property within the Property. Declarant desires to provide a flexible (yet common) and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property now and hereafter subjected to this Declaration and which shall be binding on all parties having any right, title or interest in said real property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner of all or any part thereof.

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ARTICLE 1

DEFINITIONS

Except as otherwise expressly provided in this Declaration, the following terms shall, for purposes of this Declaration, have the meanings set forth below:

1.1 "Annexable Property" shall mean any and all real property any part of which is located within two (2) miles of the property depicted on the plat described in Section 1.26.

1.2 "Annual Assessments" shall mean those Assessments designated as such in this Declaration and computed and levied as provided in Section 8.5.

1.3 "Architectural Committee" shall mean the committee established pursuant to Article 9.

1.4 "Articles" shall mean the articles of incorporation of the Association, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Declaration, the Bylaws and the statutes and regulations of the State of Arizona.

1.5 "Assessments" shall mean the Annual Assessments and the Special Assessments (as well as any other amounts declared by this Declaration to be a part of the Assessments or declared by this Declaration to be secured by the lien created under Section 8.3).

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1.6 "Association" shall mean Warner Ranch Phase 3 Association, an Arizona non-profit corporation, and its successors and assigns.

1.7 "Association Rules" shall mean the reasonable rules and regulations adopted by the Association pursuant to Section 7.3.

1.8 "Board" shall mean the board of directors of the Association elected in accordance with the provisions of the Articles, the Bylaws and the statutes and regulations of the State of Arizona.

1.9 "Bylaws" shall mean the bylaws of the Association, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Declaration, the Articles and the statutes and regulations of the State of Arizona.

1.10 "Common Area" shall mean all real property (including the improvements thereto), all easements and licenses, and all personal property and facilities owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of conveyance of the first Lot to a retail purchaser shall be Tracts A, B, C, E, F and G, Warner Ranch Phase 3, according to the plat more particularly described in Section 1.26 below.

1.11 "Common Expenses" shall mean the actual and estimated expenses of operating the Association (including any reasonable reserves), of exercise by the Association of its rights hereunder and of fulfillment by the Association of its duties and obligations imposed hereby, all as may be found to be necessary and appropriate Unofficial Document and pursuant to this Declaration or pursuant to the Articles or the Bylaws.

1.12 "Declarant" shall mean Realty Dealers, Ltd., an Illinois limited partnership, and any assignee of the rights and duties granted or reserved to the Declarant herein, which assignment shall be evidenced by a duly executed and acknowledged Recorded instrument executed by the assigning Declarant. The sale, conveyance or other transfer by Declarant, in bulk to a single purchaser, of fee title to a group of Lots shall not act as an assignment or transfer of any rights or duties of the Declarant hereunder unless the instrument Recorded to effect such sale, conveyance or other transfer clearly and expressly assigns or transfers such rights or duties and makes specific reference to this Section. The term "Declarant" shall in no event mean or refer to a buyer of a single Lot.

1.13 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, as the same may be amended from time to time.

1.14 "Dwelling Unit" shall mean any building or part thereof situated upon a Lot and intended for use and occupancy as a residence by a Single Family.

1.15 "Eligible Mortgage Holder" shall mean any holder (as evidenced by a Recorded instrument) of a First Mortgage who or which shall have made written request to the Association for notice of any proposed action that, pursuant to Section 12.2 or Section 12.11, requires the consent of a specified percentage of Eligible Mortgage Holders (which written request must contain the name and

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address of the Eligible Mortgage Holder and the Lot number or street address of the Lot against which the First Mortgage held by said Eligible Mortgage Holder is Recorded).

1.16 **"First Mortgage"** shall mean a Mortgage Recorded against a Lot which has priority over all other Mortgages Recorded against that Lot.

1.17 **"Lot"** shall mean and refer to a lot into which any part of the Property is subdivided as set forth in a subdivision plat now or hereafter Recorded with respect to all or any part of the Property. For purposes of this Declaration, a Lot shall be deemed to come into existence on and as of the date the plat depicting and establishing such Lot is Recorded. In no event shall the term "Lot" mean or refer to all or any part of the Common Area.

1.18 **"Maximum Annual Assessment"** shall mean the amount determined for each fiscal year of the Association in accordance with Section 8.7.

1.19 **"Member"** shall mean any Person entitled to membership in the Association, as provided in this Declaration.

1.20 **"Mortgage"** shall mean a deed of trust, as well as a mortgage, which, in either case, is Recorded against a Lot.

1.21 **"Mortgagee"** shall mean a beneficiary under a deed of trust, as well as a mortgagee under a mortgage, which, in either case, is Recorded against a Lot.

1.22 **"Occupant"** shall mean ~~any Person~~ ^{Unofficial Document} other than an Owner who occupies or is in possession of a Lot, whether as a lessee under a lease or otherwise.

1.23 **"Owner"** shall mean the Person or Persons who individually or collectively own fee title to a Lot (as evidenced by a Recorded instrument), provided that Declarant (and not the fee title holder) shall be deemed to be the "Owner" of each Lot with respect to which: (a) fee title is held by a trustee (other than the trustee of a deed of trust) for the benefit of Declarant; or (b) Declarant directly or indirectly holds a Recorded option to acquire fee title to such Lot; or (c) Declarant has entered into an agreement to purchase such Lot from the owner of fee title thereof (where either that agreement or a memorandum thereof has been Recorded). The term "Owner" shall not include: (i) any Person who holds an interest in a Lot merely as security for the performance of an obligation; or (ii) a lessee, tenant or other Occupant of a Lot. Notwithstanding the foregoing, a Person who holds fee title to a Lot solely as a trustee under a deed of trust pursuant to Chapter 6.1 of Title 33 of the Arizona Revised Statutes shall not be deemed to be the "Owner" of such Lot; instead, for purposes of determining the "Owner" of such Lot in accordance with this Section, the trustor under such deed of trust shall be deemed to hold fee title to such Lot.

1.24 **"Person"** means a natural person, corporation, partnership, trustee or other legal entity.

1.25 **"Phase"** shall mean: (a) any one of the following groups of Lots within the Property (as depicted on the plat described in Section 1.26):

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Phase 1	Lots 1-38, 66-111, and 144-204
Phase 2	Lots 205-265
Phase 3	Lots 39-65 and 112-143

or (b) in the case of any part of the Annexable Property hereafter annexed to the Property pursuant to Article 6 of this Declaration, any one of the groups of Lots designated as a "phase" in the Recorded instrument effecting such annexation in accordance with Article 6. In the event that the Recorded instrument effecting any such annexation does not divide the particular property being annexed into Phases, then such property shall be deemed to constitute a single Phase for purposes of this Declaration. The numbers or letters (or numbers and letters) assigned to Phases are and shall be for reference only and shall not control the order or timing of development or sale of Lots within any Phase or from Phase to Phase.

1.26 "Property" shall mean Lots 1-265, inclusive, and Tracts A through G, inclusive, Warner Ranch Phase 3, according to the plat recorded in Book 343 of Maps, page 40, records of Maricopa County, Arizona, and shall further refer to such additional property, if any, as may hereafter be annexed thereto pursuant to Article 6 or as is now or may hereafter be owned in fee simple by the Association, but shall not include real property, if any, which is deleted and removed from the Property pursuant to Section 6.7.

1.27 "Record", "Recording", "Recorded" and "Recordation" shall mean placing or having placed an instrument of public record in the official records of Maricopa County, Arizona, or of such other governmental authority, office or official with which or whom the applicable laws of the State of Arizona prescribe that documents affecting title to real property in the area including the Property are to be placed of public record.

1.28 "Single Family" shall mean a group of persons related by blood, marriage or legal adoption, or a group of not more than three unrelated persons maintaining a common household.

1.29 "Special Assessments" shall mean those Assessments levied in accordance with Section 8.9.

ARTICLE 2

PROPERTY RIGHTS

Every Owner shall have a non-exclusive right and easement of enjoyment in, to and over the Common Area, subject to any restrictions or limitations contained in this Declaration or in any Recorded instrument conveying to the Association or subjecting to this Declaration such property, and subject further to the Association Rules. Any Owner may assign his, her or its right of enjoyment to (and share the same with) the members of his or her household and assign the same to and share the same with his, her or its tenants and invitees subject to the provisions of this Declaration and to reasonable regulation by the Board and otherwise in accordance with such procedures as the Board

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may adopt. An Owner who leases his, her or its Lot shall be deemed to have delegated such Owner's rights and easements under this Article 2 to the lessee of such Lot for the term of such lease.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS

3.1 Votes of Owners of Lots. Every Owner of a Lot automatically shall be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner's membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the membership is attributable. In the event any Lot is owned by two or more Persons, whether by joint tenancy, tenancy in common, community property or otherwise, each such Person shall be considered a Member but the membership as to such Lot shall be joint, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall either: (a) make such designation, in which event such designation shall be binding for all purposes; or (b) declare that until all Persons who together hold such membership jointly make such written designation, the vote(s) attributable to such membership under this Declaration shall not be cast or counted on any questions before the Members; provided, however, that if any one of such Persons casts a vote representing a certain Lot without objection from any other Person sharing ownership of such Lot, that Person will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot unless and until objection thereto is made to the Board, in writing. Notwithstanding the foregoing, so long as the Class B membership is in existence, no Class B Member shall at the same time be a Class A Member nor shall a Class B Member have any Class A votes, and the membership and number of votes of the Class B Member(s) shall be determined in accordance with Subsection 3.3.2. Subject to Subsection 3.3.1, each Owner (other than Declarant, so long as the Class B membership is in existence) shall have one vote for each Lot owned by such Owner.

3.2 Declarant. Declarant shall be a Member of the Association for so long as it holds a Class A or Class B membership.

3.3 Voting Classes. The Association shall have two classes of voting Members.

3.3.1 Class A. Class A Members shall be all Owners except Declarant (until the conversion of Declarant's Class B membership to Class A membership as provided below). Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, and except as provided in this Subsection 3.3.1, a Class A Member shall have the number of votes provided in Section 3.1; and

3.3.2 Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned by such Member. Declarant shall have the right, at any time and from time to time, to assign all or any part of its voting rights appurtenant to its Class B membership (as well as all or any other rights appurtenant thereto) to one or more Persons acquiring, for purposes of development and sale, any part of the Property. Further, Declarant shall have the right, at any time and from time to time, to designate an individual or individuals to exercise Declarant's voting rights (whether appurtenant to Class A or Class B membership), provided, however,

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that such designation shall not act as an assignment by Declarant of its membership or voting rights hereunder. Subject to the provisions of Article 6 below, the Class B membership automatically shall cease and be converted to a Class A membership upon the happening of the first of the following events:

- (a) the date which is 90 days after the date upon which the total number of votes of the Class A Members equals the total number of votes of the Class B Member;
- (b) the date which is ten (10) years after the date this Declaration is Recorded;
- or
- (c) the date on which Declarant Records a written notice electing to convert the Class B membership to Class A membership.

3.4 Right to Vote. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. The vote for each Member must be cast as a single unit. Split or fractional votes shall not be allowed. Any Owner of a Lot which is leased or which is subject to a valid, outstanding and Recorded executory agreement of sale may, in the lease, agreement of sale or other written instrument, assign the voting right appurtenant to the Lot to the lessee thereof or to the purchaser thereof under such agreement of sale, as applicable, provided that a copy of the written assignment of such voting rights is furnished to the Secretary of the Association prior to any meeting at which such lessee or purchaser seeks to exercise such voting right.

3.5 Members' Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules and any other rules and regulations adopted pursuant to any of the foregoing.

3.6 Transfer of Membership. Except as otherwise provided in this Declaration, the rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure or other legal process authorized under Arizona law, shall operate to transfer the membership appurtenant thereto to the new Owner and any attempt to make any other form of transfer shall be void.

ARTICLE 4

MAINTENANCE

4.1 Association's General Responsibilities. The Association shall maintain and keep in good repair the Common Area (and certain other areas, as more expressly provided in this Section 4.1), and the costs of such maintenance shall be Common Expenses of the Association (subject to any insurance then in effect and subject to Section 4.5). This maintenance shall include, but not be limited to:

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4.1.1 maintenance, repair and replacement of all landscaping and other flora, structures and improvements situated upon the Common Area;

4.1.2 maintenance, repair and replacement of landscaping and flora in or upon public rights-of-way immediately adjacent to the exterior boundaries of the Property, and of any perimeter or boundary walls on or surrounding the exterior boundaries of the Property;

4.1.3 maintenance, repair and replacement of landscaping and signs within areas designated on one or more subdivision plats or other instruments Recorded by, or bearing the written approval of, Declarant (or, after termination of the Class B membership, the Association) with respect to all or portions of the Property as "landscape easements," "landscape and wall easements" or "landscape and sign easements" (or similar designations) to be maintained by the Association;

4.1.4 maintenance, repair and replacement of the side facing a street or portion of the Common Area of any boundary or perimeter wall situated within areas designated on one or more subdivision plats or other instruments Recorded by, or bearing the written approval of, Declarant (or, for subdivision plats Recorded after termination of the Class B membership, the Association) with respect to the Property as "wall easements" (or similar designations) to be maintained by the Association; and

4.1.5 maintenance and repair of any drainage easements upon or across the Common Area.

Notwithstanding anything to the contrary in the foregoing, except where otherwise provided in an instrument Recorded by, or bearing the ^{Unofficial Document} written approval of, Declarant, the Association shall be responsible for maintaining the side of any boundary wall facing a public street or roadway (or a private street or roadway owned by the Association), while the Owner of a Lot shall be responsible for maintaining the side of any boundary wall facing such Owner's Lot. For purposes of the preceding sentence a "boundary wall" shall be any wall or fence separating a Lot from a public street or roadway adjacent to or along the exterior perimeter boundaries of Warner Ranch Phase 3 or adjacent to or along a major arterial street or roadway (whether public or owned by the Association) within Warner Ranch Phase 3 if, in the case of a wall within Warner Ranch Phase 3, such wall is designed as a "common" or "theme" wall presenting a uniform appearance along its length.

4.2 Maintenance of Owner's Structures. Each Owner shall be responsible for the maintenance, cleaning, painting, repair and general care of all structures existing or constructed upon such Owner's Lot and, in particular, each Owner shall cause the exterior of said structures to be maintained in good condition and repair and in an attractive state consistent with general community standards within the Property. In the event that the Board shall determine, after providing reasonable notice and an opportunity to be heard, that any Owner is in breach of such Owner's obligations under the preceding sentence, the Board shall promptly give such Owner written notice of such determination, including a reasonably detailed list or description of the repairs, maintenance or other work required to cure such Owner's breach, and in the event the Owner shall not have cured such breach within thirty (30) days after the date of said written notice, the Association may, in the discretion of the Board, cause the repairs, maintenance or other work to be performed so as to cure such Owner's breach, and the costs of doing so, together with interest from the date of expenditure at the rate set forth in Section 12.8, shall be the personal obligation of such Owner and shall

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constitute a lien on such Owner's Lot, which lien shall have the priority and may be enforced in the manner described in Section 8.3, the Association shall also have standing and authority to request that a court of competent jurisdiction compel such Owner to cure such breach, and to the extent not inconsistent with an order of such court, the Association may pursue either or both of the courses of action described in this sentence. The Association shall have an easement on, over, across and through each Lot to permit it to carry out its duties and obligations under this Article 4.

4.3 Publicly-Dedicated Areas. Except as expressly provided in this Article 4 (and, in particular, in Subsection 4.1.2), and except as may otherwise be required by applicable law, the Association shall have no responsibility to maintain any areas within the Property (including, but not limited to, public streets) which are dedicated to or the responsibility of a municipality or other governmental entity.

4.4 No Discrimination. The provision of services in accordance with this Article shall not be deemed to be discrimination in favor of or against any Owner.

ARTICLE 5

INSURANCE AND FIDELITY BONDS; CASUALTY LOSSES

5.1 Insurance to be Obtained by the Association.

5.1.1 Hazard Insurance.

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(a) The Board, acting on behalf of the Association, shall obtain and maintain at all times insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Arizona, against all other perils customarily covered for similar types of projects (including those covered by the standard "all risk" endorsement available from time to time in the State of Arizona), and against loss or damage due to vandalism and malicious mischief. Said insurance shall be in an amount equal to 100% of the current replacement cost, from time to time, without deduction for depreciation, of all such insurable improvements (excluding land, foundations, excavations and other items usually excluded from such insurance coverage, but including fixtures and building service equipment and personal property and supplies owned by the Association), with such amount to be redetermined annually (and upon the subjection of any portion, or all, of the Annexable Property to the effect of this Declaration if such subjection results in an addition to the Common Area of property upon which are situated improvements required to be insured hereunder) by the Board with the assistance of the insurer or insurers providing such coverage.

(b) The policy or policies providing the insurance required by this Subsection 5.1.1 shall provide that: (i) any insurance trust agreement shall be recognized; (ii) the insurer shall waive any right of subrogation against the Owners, the Board or the Association, and their respective agents, tenants, servants, employees, guests and household members; (iii) such insurance shall not be cancelled, invalidated or suspended by reason of any acts or omissions of any Owner (or of such Owner's invitees, agents, tenants, servants, employees, guests or household

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members), or of any member, officer or employee of the Board without a prior written demand to the Board that any such act or omission be cured and without providing a sixty (60) day period within which the Board may cure such act or omission (or cause the same to be cured); (iv) such insurance coverage shall be primary, and shall in no event be brought into contribution with any insurance maintained by individual Owners, their Mortgagees or other lien holders; and (v) the coverage afforded by such policy or policies shall not be prejudiced by any act or omission of any Owner or Occupant (or their agents) when such act or omission is not within the control of the Association.

(c) The policy or policies providing the insurance required by this Subsection 5.1.1 shall also contain (if available at no additional cost or at such additional cost as is not demonstrably unreasonable) the following endorsements (or their equivalents): (i) "agreed amount" and "inflation protection" endorsements; (ii) "increased cost of construction" endorsement; (iii) "contingent liability from operation of building laws or codes" endorsement; (iv) "demolition cost" endorsement; and (v) "current replacement cost" endorsement.

(d) The policy or policies providing the insurance required by this Subsection 5.1.1 shall also contain a steam boiler and machinery endorsement providing coverage in an amount not less than the lesser of \$2,000,000 or the insurable value of the building(s) housing such boiler and machinery, if any.

(e) Unless a higher maximum deductible amount is required by applicable law, each policy providing the insurance coverage required by this Subsection 5.1.1 shall provide for a deductible not to exceed the lesser of \$10,000 or one percent (1%) of the face amount of such policy.

5.1.2 Liability Insurance. ^{Unofficial Document} The Board, acting on behalf of the Association, shall obtain and maintain at all times a comprehensive general liability policy insuring the Association, each member of the Board, each Owner and each Declarant Designee (as defined below), against any liability to the public or to any Owner or Occupant (and such Owner's or Occupant's invitees, agents, employees, tenants, guests, servants and household members) for death, bodily injury and property damage arising out of or incident to the ownership or use of the Common Area or arising out of or incident to the performance by the Association of its maintenance and other obligations hereunder. The Board, with the assistance of the insurer(s) providing such coverage, shall review annually the amounts of coverage afforded by said comprehensive general liability policy or policies and adjust such amounts of coverage as the Board deems appropriate, but in no event shall said policy or policies provide coverage less than One Million Dollars (\$1,000,000.00) for death, bodily injury and property damage for any single occurrence. The policy or policies providing such insurance shall, by specific endorsement or otherwise, preclude denial by the insurer(s) providing such insurance of a claim under such policy or policies because of negligent acts or omissions of the Association, any Owner(s) or any Declarant Designee(s) or any other Person named as an insured or additional insured thereunder. For purposes of this Subsection 5.1.2 (and Subsection 5.1.7), the term "Declarant Designee" shall mean Declarant and, so long as Declarant or any affiliate of Declarant, or any Person with whom Declarant or any such affiliate contracts directly for the performance of all or a substantial portion of Declarant's rights and obligations hereunder, or for the construction of substantial improvements on the Property, retains an interest in the Property or any Lot, such affiliate and such other Person, if identified by Declarant to the Association, provided that any added premium cost or other expense

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resulting from naming Declarant, such affiliate or such other Person as insureds shall be borne by Declarant, such affiliate or such other Person.

5.1.3 Flood Insurance. In the event any part of the Common Area is in a "special flood hazard area," as defined by the Federal Emergency Management Agency (or its successors), the Board, acting on behalf of the Association, shall obtain (and maintain at all times during which any part of the Common Area is in such a "special flood hazard area") a "master" or "blanket" policy of flood insurance covering all insurable improvements on the Common Area and covering any personal property situated from time to time within such improvements (to the extent such personal property is normally covered by the standard flood insurance policy available from time to time in the State of Arizona). Said insurance shall be in an amount not less than the lesser of: (a) 100% of the current replacement cost, from time to time, of all such insurable improvements (and such insurable personal property) located in the "special flood hazard area"; or (b) the maximum coverage available for such insurable improvements and insurable personal property under the National Flood Insurance Program. Unless a higher maximum deductible amount is required by applicable law, the policy providing such insurance shall provide for a deductible not to exceed the lesser of \$5,000 or one percent (1%) of the face amount of such policy.

5.1.4 General Provisions Governing Insurance. The insurance required to be obtained under Subsections 5.1.1, 5.1.2 and 5.1.3 shall be written in the name of the Association as trustee for each of the Owners and for each Mortgagee (as their respective interests may appear) and shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with one or more companies authorized to provide such insurance in the State of Arizona;
- (b) Exclusive authority to adjust losses under policies in force on property owned or insured by the Association shall be vested in the Board;
- (c) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, Occupants or their Mortgagees or other lienholders, and the insurance carried by the Association shall be primary;
- (d) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Board or the Owners and their respective tenants, servants, agents, employees, guests and household members;
- (e) Each policy providing insurance coverage required by Subsections 5.1.1, 5.1.2 and 5.1.3 shall require the applicable insurer to give not less than ten (10) days written notice to the Association, and to each Mortgagee which shall have given such insurer written notice of such Mortgagee's interest in a Lot (which notice must include the name and address of such Mortgagee), of any cancellation, refusal to renew or material modification of such policy; and

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(f) To the extent reasonably available, each policy providing insurance coverage required by Subsections 5.1.1, 5.1.2 and 5.1.3 shall contain a waiver by the applicable insurer of its rights to repair and reconstruct instead of paying cash.

5.1.5 Fidelity Bonds. The Board, acting on behalf of the Association, shall obtain and maintain at all times adequate fidelity bond coverage to protect against dishonest acts on the part of officers, directors and employees of the Association and all others who handle, or are responsible for handling, funds held or administered by the Association, whether or not such officers, directors, employees or others receive compensation for services they render to or on behalf of the Association. Any independent management agent which handles funds for the Association shall also obtain (and pay for) such fidelity bond coverage with respect to its own activities (and those of its directors, officers and employees, whether or not such directors, officers or employees receive compensation for services rendered). Such fidelity bonds: (a) shall name the Association as obligee; (b) shall be issued by one or more companies authorized to issue such bonds in the State of Arizona; and (c) shall be in an amount sufficient to cover the maximum total of funds reasonably expected by the Board to be in the custody of the Association or such agent at any time while such bond is in force, but in no event shall the amount of such fidelity bond coverage be less than the sum of three (3) months' Annual Assessments on all Lots, plus the total of funds held in the Association's reserves. Each such fidelity bond shall provide that the issuer thereof shall provide not less than ten (10) days written notice to the Association and to each Eligible Mortgage Holder before such bond may be cancelled or substantially modified for any reason.

5.1.6 Workers' Compensation Insurance. The Board, acting on behalf of the Association, shall obtain and maintain workers' compensation insurance if and to the extent necessary to meet the requirements of applicable law.

5.1.7 Cost of Insurance. Unofficial Document All premiums for the insurance or bonds required to be obtained by the Board by this Section 5.1 shall be Common Expenses (except that, as provided in Subsection 5.1.5, the cost of the fidelity bond required to be furnished by any independent management agent shall be paid by such agent, and, as provided in Subsection 5.1.2, any added cost of naming Declarant, or any other Declarant Designee, shall be borne by Declarant or such other Declarant Designee). The Board shall not be liable for failure to obtain or maintain any of the insurance coverage required by this Section 5.1, or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such insurance coverage from reputable companies authorized to provide such insurance in the State of Arizona, or if such insurance coverage is available only at an unreasonable cost.

5.1.8 Subsequent Changes in Insurance Requirements. It is the intention of this Article 5 (and, in particular, of this Section 5.1), to impose upon the Association the obligation to obtain and maintain in full force and effect at least those types and amounts of insurance as are required, at the time this Declaration is Recorded, by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration and Federal Housing Administration. However, notwithstanding any provision of this Declaration to the contrary, should any or all of said agencies subsequently amend or modify their respective requirements regarding the insurance coverage required to be maintained by the Association, the Board, acting on behalf of the Association, shall, promptly upon receiving notice of such amendment or modification from any such agency, from any Owner or Eligible Mortgage Holder or from Declarant, obtain such additional,

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modified or amended policy or policies of insurance as may be necessary to conform to such amended or modified requirements (provided, however, that the Board shall not be required to alter the types or amounts of coverage if the amendments or modifications adopted by any such agency reduce or eliminate required types or amounts of insurance). Should such requirements of any such agency conflict with the requirements of any other such agency or with applicable provisions of law, the Board, acting on behalf of the Association, shall diligently work with such agency or agencies to resolve such conflict and shall thereafter obtain and maintain such additional, modified or amended policy or policies of insurance as may be necessary to conform with the requirements of such agencies, taking into account the resolution of said conflict. In the event the Board, after exercise of such diligence, is unable to resolve such conflict, the Board, acting on behalf of the Association, shall exercise its good faith business judgment and obtain and maintain in full force and effect such insurance coverage as the Board, in the exercise of such judgment, deems to conform as closely as possible with the applicable requirements of all such agencies, and of law, taking into account such conflict.

5.2 Insurance to be Obtained by the Owners.

5.2.1 Public Liability Insurance. It shall be the individual responsibility of each Owner to provide, as such Owner sees fit and at such Owner's sole expense, such comprehensive public liability insurance as such Owner may desire against loss or liability for damages and any expense of defending against any claim for damages which might result from the ownership, use or occupancy of such Owner's Lot.

5.2.2 Hazard and Contents Insurance. It shall be the individual responsibility of each Owner to provide, as such Owner sees fit and at such Owner's sole expense, such fire, liability, theft and any other insurance covering: (a) ^{Unofficial Document}any Dwelling Unit and any other structure on such Owner's Lot; and (b) any and all fixtures and personal property upon such Lot or in such Dwelling Unit or other structure(s).

5.3 Casualty Losses.

5.3.1 Damage and Destruction.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the property required to be insured by the Association under Section 5.1, the Board or its duly authorized agent shall: (i) proceed with the filing and adjustment of all claims arising under such insurance; (ii) obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property; and (iii) upon receipt of the proceeds of such insurance and except as is otherwise provided in this Subsection 5.3.1, use such proceeds to repair or reconstruct the damaged or destroyed property. The terms "repair" and "reconstruction" (or variants thereof), as used in this Article 5 shall mean repairing or restoring the property in question to substantially the same condition as that in which it existed prior to the fire or other casualty (or, where applicable, replacing the damaged or destroyed property with property substantially similar to the damaged or destroyed property as it existed prior to such damage or destruction).

(b) Any major damage or destruction to the property required to be insured by the Association under Section 5.1 shall be repaired or reconstructed unless: (i) at a special

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meeting of the Members of the Association duly noticed and convened within sixty (60) days after the occurrence of such damage or destruction, the Members determine, by a vote of Persons holding not less than seventy-five percent (75%) of the votes in each class of Members, not to so repair or reconstruct; and (ii) Eligible Mortgage Holders representing at least fifty-one percent (51%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders concur in such determination not to so repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made or become available; provided, however, that such extension shall not exceed an additional sixty (60) days. The Board shall determine whether any minor damage or destruction to the Common Area should be repaired or reconstructed.

(c) In the event that it is determined in the manner described above that the damage or destruction of any part of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event such property shall be maintained by the Association in a neat and attractive condition as an undeveloped portion of the Common Area.

5.3.2 Excess or Deficiency of Proceeds. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to pay the cost thereof, the Board shall, without the necessity of a vote of the Members, levy assessments against the Owners of all Lots, which assessments shall be allocated equally among all Lots. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Any assessments levied pursuant to this Subsection 5.3.2 shall be deemed to be a part of the Assessment Unofficial Document and all be secured by the lien created by Section 8.3. If the funds available from insurance exceed the cost of repair, such excess shall be used to meet Common Expenses or, in the discretion of the Board, placed in a reserve account for contingencies or capital improvements.

5.3.3 Repair or Reconstruction of Dwelling Units or Other Structures. In the event of the destruction of a Dwelling Unit or other structure on a Lot, or of damage to such Dwelling Unit or other structure which, in the reasonable judgment of the Board, materially affects the exterior appearance thereof, the Board shall have the right, at its option, exercisable by written notice to the Owner of the Lot upon which such Dwelling Unit or other structure is situated, to require such Owner to repair or reconstruct (or cause to be repaired or reconstructed), at such Owner's expense (subject to any insurance proceeds as such Owner may then or thereafter receive in respect of such destruction or damage), such Dwelling Unit or other structure within such reasonable period of time as shall be specified by the Board in such notice (which period of time shall in no event be less than eight (8) months from the date of such destruction or damage). The Board may exercise such right and establish such time period notwithstanding such Owner's failure to maintain hazard or casualty insurance upon such Owner's Lot or any structures thereon and notwithstanding any unavailability or delay in receipt of proceeds of any insurance policy or policies, although the Board may take such matters into account in establishing or extending the time period within which such repair or reconstruction must be completed. Any such repair or reconstruction work shall be performed in compliance with all applicable provisions thereof, and the Owner of such Lot shall take such steps as are reasonably necessary to prevent damage to surrounding property and injury to persons as may

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result from or arise in connection with the destroyed or damaged Dwelling Unit or other structure or the repair or reconstruction activities with respect thereto.

ARTICLE 6

ANNEXATION OF ADDITIONAL PROPERTY; DEANNEXATION

6.1 Reservation of Certain Annexation Rights. As of the date this Declaration is Recorded, Declarant contemplates that one or more portions (and perhaps all) of the Annexable Property may from time to time be annexed to the Property (and thereby subjected to the provisions of this Declaration) and, therefore, while Declarant shall have no obligation or duty to so annex all or any portion of the Annexable Property, Declarant hereby reserves the right, privilege and option from time to time hereafter to add and annex to the Property (and thereby to subject to the provisions of this Declaration) any part(s) or all of the Annexable Property, without the vote of the Members and without notice to or approval of any holder, insurer or guarantor of any Mortgage or of any other Person, provided, however, that the right, privilege and option reserved in this sentence shall expire and terminate at 11:59 p.m. local time on December 31 of the calendar year in which falls the ten (10th) anniversary of the date this Declaration is Recorded. Notwithstanding the foregoing sentence, no portion of the Annexable Property may be annexed to the Property unless, at the time of each and any such annexation either: (a) the portion of the Annexable Property to be annexed is owned either by Declarant or by a trustee for the benefit of Declarant; or (b) the owner of the portion to be annexed (if other than Declarant or such trustee) consents in a written, Recorded instrument to such annexation.

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6.2 Limitations on Other Annexations. As of the date this Declaration is Recorded, Declarant does not intend to annex any additional property to the Property other than the Annexable Property, and additional property not included within the Annexable Property may be annexed to the Property only: (a) by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for that purpose; and (b) with the approval of the applicable percentage of Eligible Mortgage Holders, as provided in Section 12.2; and (c) with the express written consent of each owner of all or any part of the property proposed to be annexed.

6.3 FHA and VA Approval. In addition to the requirements imposed by Sections 6.1 and 6.2, so long as the Class B membership is in existence no additional property (whether or not a part of the Annexable Property) may be annexed to the Property without the prior approval of the Federal Housing Administration or the Veterans Administration (except to the extent such annexation is in accordance with a plan of annexation or expansion previously approved by such agencies).

6.4 Recordation of Annexation Instrument. Upon approval to the extent required by this Article 6 of any annexation of property to the Property, Declarant, in the case of annexation of all or any part of the Annexable Property pursuant to Section 6.1, or the President and Secretary of the Association, in the case of any other annexation, shall execute, acknowledge and Record an instrument effecting and evidencing such annexation (which instrument shall also be duly executed and acknowledged by each owner of all or any part of the property being annexed), and such annexation shall be deemed effective only upon such Recordation. Such instrument (or a separate instrument Recorded by Declarant or the Association, as applicable, against any property annexed to

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the Property pursuant to this Article 6 and executed by the Owner of such annexed property) may subject the annexed property to such additional covenants, conditions and restrictions as the owner thereof may deem appropriate or desirable (subject, however, to approval thereof by Declarant or the Association, as applicable, and to such other approval rights as may be granted hereby to other parties in connection with such annexation), provided, however, that any and all such additional covenants, conditions and restrictions shall be subordinate and subject to the provisions of this Declaration.

6.5 Effect of Annexation. Upon the effective date of an annexation pursuant to this Article 6: (a) the property so annexed shall immediately be and become a part of the Property and subject to all of the provisions hereof; (b) any Lot then or thereafter constituting a part of the annexed property, and the Owner of any such Lot, shall thereupon be subject to all of the provisions of this Declaration (including, but not limited to, the provisions of Articles 2, 3 and 8); (c) any part or parts of the property annexed which is or are designated or declared to be Common Area shall thereupon be subject to the provisions of this Declaration (including, but not limited to, the provisions of Articles 2 and 4); and (d) improvements then or thereafter situated upon the annexed property shall be subject to the provisions of this Declaration and shall be reasonably consistent, in terms of quality of construction, with the improvements situated upon other portions of the Property prior to such annexation.

6.6 No Obligation to Annex. Nothing herein shall constitute a representation, warranty or covenant that Declarant, any successor or assign of Declarant, or any other Person will subject any additional property (whether or not a part of the Annexable Property) to the provisions of this Declaration, nor shall Declarant, any successor or assign of Declarant, or any other Person be obligated so to do, and its Declarant may, by Recorded instrument executed by Declarant, waive its rights so to do, in whole or in part, at any time Unofficial Document or from time to time.

6.7 De-Annexation. Notwithstanding any other provision of this Declaration, Declarant shall have the right from time to time, at its sole option and without the consent of any other Person (except as provided in this Section 6.7), to delete from the Property and remove from the effect of this Declaration one or more portions of the Property, provided, however, that: (a) a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal such portion is owned by Declarant (or an affiliate of Declarant or a trustee of a trust for the benefit of Declarant) or, in the case of a deletion and removal of a portion of the Property at the request of the owner(s) of such portion, Declarant executes and Records an instrument approving such deletion and removal; (b) a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal no Dwelling Units or Common Area recreational facilities have been constructed thereon; and (c) a portion of the Property may not be so deleted and removed if such deletion and removal would deprive Owners and Occupants of other parts of the Property of access or other easements or rights-of-way necessary to the continued use of their respective parts of the Property (unless Declarant at the same time provides for reasonably adequate replacement easements or rights-of-way). Declarant may exercise its rights under this Section 6.7 in each case by executing and causing to be Recorded an instrument which identifies the portion of the Property to be so deleted and removed and which is executed by each owner of such portion (if other than Declarant), and the deletion and removal of such portion of the Property shall be effective upon the later of: (i) the date such instrument is Recorded; or (ii) the effective date specified in such instrument, if any, whereupon, except as otherwise expressly provided in this Section 6.7, the portion of the Property so deleted and removed shall thereafter for all purposes be deemed not a part of the Property and not subject to this

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Declaration, and the owner(s) thereof (or of interests therein) shall not be deemed to be Owners or Members or have any other rights or obligations hereunder except as members of the general public. No such deletion and removal of a portion of the Property shall act to release such portion from the lien for Assessments or other charges hereunder which have accrued prior to the effective date of such deletion and removal, but all such Assessments or other charges shall be appropriately prorated to the effective date of such deletion and removal, and no Assessments or other charges shall thereafter accrue hereunder with respect to the portion of the Property so deleted and removed. Each portion of the Property deleted and removed pursuant to this Section 6.7 shall thereafter be deemed to be a part of the Annexable Property unless otherwise expressly provided to the contrary in the instrument Recorded by Declarant to effect such deletion and removal.

ARTICLE 7

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

7.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control of the Common Area and shall keep the Common Area in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

7.2 Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property, except that, subject to the provisions of Sections 12.2, 12.10 and 12.11, no dedication, sale or transfer of all or any part of the Common Area shall be made or effective unless approved by not less than two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to all or any part of the Property as may be conveyed or assigned to the Association by Declarant (including, but not limited to, such parts of the Common Area as may now or hereafter be held by Declarant).

7.3 Rules and Regulations. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Area, provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Property and the Common Area. Upon adoption, the Association rules shall have the same force and effect as if they were set forth herein. Sanctions for violation of the Association Rules or of this Declaration may be imposed by the Board and may include suspension of the right to vote and the right to use the recreational facilities on the Common Area, and may also include reasonable monetary fines (so long as such fines are reasonable and nondiscriminatory, and are in accordance with a general schedule of fines adopted or amended by the Board prior to the date of the particular violation for which a fine is to be imposed). No suspension of an Owner's right to vote or of the right of such Owner (or any Occupant of such Owner's Lot or any guest or household member of such Owner or Occupant) to use the recreational facilities on the Common Area due to a violation of the Association Rules may be for a period longer than sixty (60) days (except where such

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Owner or Occupant fails or refuses to cease or correct an on-going violation or commits the same or another violation, in which event such suspension may be extended for additional periods not to exceed sixty (60) days each until such violation ceases or is corrected).

7.4 Availability of Books, Records and Other Documents. The Association shall maintain complete and current copies of this Declaration, the Articles, the Bylaws and the Association Rules (as well as any amendments to the foregoing) and of the books, records and financial statements of the Association, and, upon the prior written request to the Association by any Owner or by any holder, insurer or guarantor of a First Mortgage, shall make the same available for inspection, at reasonable times and under reasonable circumstances, by such Owner or such holder, insurer or guarantor.

7.5 Audited Financial Statements. In the event any holder, insurer or guarantor of a First Mortgage submits to the Association a written request for an audited financial statement of the Association for the most recently concluded fiscal year of the Association, the Association shall promptly deliver such an audited financial statement to such holder, insurer or guarantor, and in the event no such audited financial statement has been prepared for the most recently concluded fiscal year, the Association shall cause the same to be prepared and delivered to such holder, insurer or guarantor as soon as reasonably possible. The cost of having such an audited financial statement prepared shall be a Common Expense.

7.6 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

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7.7 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area. The Board shall determine the compensation to be paid to the manager.

ARTICLE 8

ASSESSMENTS

8.1 Creation of Assessment Right. In order to provide funds to enable the Association to meet its financial and other obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Annual Assessments and Special Assessments shall be for Common Expenses and shall be allocated equally among all Lots, subject to the provisions of this Article 8.

8.2 Covenants with Respect to Assessments. Each Owner, by acceptance of his, her or its deed (or other conveyance instrument) with respect to a Lot, is deemed to covenant and agree to pay the Assessments levied pursuant to this Declaration with respect to such Owner's Lot, together with interest from the date due at a rate equal to the greater of: (a) ten percent (10%) per annum; or (b) the annual rate of interest then in effect for new first priority single family residential mortgage

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loans guaranteed by the Veterans Administration, and together with such costs and reasonable attorneys' fees as may be incurred by the Association in seeking to collect such Assessments. Each of the Assessments with respect to a Lot, together with interest, costs and reasonable attorneys' fees as provided in this Section 8.2, shall also be the personal obligation of the Person who or which was the Owner of such Lot at the time such Assessment arose with respect to such Lot, provided, however, that the personal obligation for delinquent Assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor. No Owner shall be relieved of his, her or its obligation to pay any of the Assessments by abandoning or not using his, her or its Lot or the Common Area, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot, as evidenced by a Recorded instrument, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.

8.3 Lien for Assessments; Foreclosure. There is hereby created and established a lien against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner or Occupant thereof (together with any present or future charges, fines, penalties or other amounts levied against such Lot or the Owner or Occupant thereof pursuant to this Declaration or the Articles, the Bylaws or the Association Rules). Such lien is and shall be prior and superior to all other liens affecting the Lot in question, except: (e) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale and transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but no such sale or transfer shall relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage and convey the same. During the period any Lot is owned by the Association, no right to vote shall be exercised with respect to said Lot and no Assessments (whether Annual Assessments or Special Assessments) shall be assessed or levied on or with respect to said Lot, provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Area. The Association may maintain a suit to recover a money judgment for unpaid Assessments, rent, interest and attorneys' fees without foreclosing or waiving the lien securing same. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate).

8.4 Dates Assessments Commence. Assessments shall be payable in respect of a Lot (including any Lot owned by Declarant) from the date upon which title to said Lot, or any other Lot

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within the Phase containing such Lot, shall first be conveyed to a retail purchaser, and such Assessments shall be payable regardless of whether a Dwelling Unit or other structure shall be situated upon such Lot on such date. As to any Lot owned by Declarant with respect to which Assessments shall have commenced as provided in the preceding sentence, the Assessments payable by Declarant with respect to such Lot shall be an amount equal to twenty-five (25%) of the Assessments which would otherwise be payable hereunder with respect to such Lot if it were owned by an Owner other than Declarant. No Assessments shall be payable with respect to a Lot so long as Declarant shall own all of the Lots within the Phase containing such Lot. As to any Lot conveyed by Declarant to a retail purchaser, Assessments as to such Lot shall be prorated as of the close of escrow with respect to such Lot (or, if no escrow is utilized, as of the date of Recordation of the deed conveying such Lot to such retail purchaser). The numbers or letters (or numbers and letters) assigned to the Phases are for reference only, and Declarant shall retain full discretion as to the order and timing of its development and sales of Lots within any Phase or from Phase to Phase within property owned by Declarant.

8.5 Computation of Assessments; Annual Budget. The Board shall prepare and adopt an estimated annual budget for each fiscal year of the Association, which annual budget shall serve as the basis for determining the Annual Assessments for the applicable fiscal year (subject to the limitations of Section 8.7 hereof). Such budget shall take into account the estimated Common Expenses and cash requirements of the Association for the year. The annual budget shall also take into account the estimated net available cash income for the year, if any, from the operation or use of any of the Common Area. The annual budget shall also provide for a reserve for contingencies for the year (and for subsequent fiscal years) and a reserve for replacements, all in such reasonably adequate amounts as shall be determined by the Board, taking into account the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost. Not later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause to be delivered or mailed to each Owner a copy of the budget and a statement of the amount of the Annual Assessments to be levied against such Owner's Lot for the fiscal year in question. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the Annual Assessments provided for therein) for the year immediately preceding shall remain in effect. Subject to the provisions of this Section 8.5 and of Sections 8.7 and 8.9, neither the annual budget (nor any amended budget) adopted by the Board, nor any Assessment levied pursuant thereto, shall be required to be ratified or approved by the Owners. If, at any time during a fiscal year of the Association the Board deems it necessary to amend the budget for such year, the Board may do so and may levy an additional Annual Assessment for such year (subject to the limitations imposed by Section 8.7) or may call a meeting of the Members to request that the Members approve a Special Assessment pursuant to Section 8.9. Within sixty (60) days after adoption of the amended budget (if the Board elects to levy an additional Annual Assessment), the Board shall cause a copy of the amended budget and a statement of the additional Annual Assessments to be levied against the Lots to be delivered or mailed to each Owner; if, instead, the Board elects to call a meeting of Members to seek approval of a Special Assessment, the Board shall cause a copy of the amended budget proposed by the Board to be delivered or mailed to each Owner with the notice of such meeting, and if a Special Assessment is duly approved by the Members at such meeting, shall cause a statement of the Special Assessment to be levied against each Lot to be promptly mailed or delivered to each Owner.

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8.6 Due Dates. Annual Assessments for each fiscal year shall be due and payable in equal periodic installments, payable not more frequently than monthly nor less frequently than semiannually, as determined for such fiscal year by the Board, with each such installment to be due and payable on or before the first day of the applicable period during that fiscal year. Special Assessments, if any, shall be paid in such manner and on such dates as may be fixed by the Board. In addition to any other powers of collection or enforcement granted hereunder, in the event any Assessments (or installments thereof) with respect to a Lot are delinquent, the Board shall have the right, in its sole discretion, to accelerate the date on which all Assessments with respect to such Lot are due and payable. For purposes of this Declaration, Assessments shall be deemed "paid" when actually received by the Association or by its manager or agent designated by the Association to collect the same (provided, however, that if any Assessments were paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

8.7 Maximum Annual Assessment. The Annual Assessments provided for herein shall not at any time exceed the Maximum Annual Assessment, as determined in accordance with this Section 8.7. For the fiscal year ending December 31, 1991, the Maximum Annual Assessment shall be Four Hundred Twenty Dollars (\$420.00) for each Lot. Thereafter, unless a greater increase is approved by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index -- All Urban Consumers -- All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor governmental agency), or, if such index is no longer published by said Bureau or successor agency, in the index most similar in composition to such index; or (b) ten percent (10%). ^{Unofficial Document} Notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by the Declaration to be maintained by the Association; or (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, in either case (i) or (ii) notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is at a rate greater than otherwise permitted under the preceding sentence. In addition, in the event Declarant (or a trustee for the benefit of Declarant, or any assignee of either) at any time hereafter annexes any portion(s) or all of the Annexable Property, and the Association's added maintenance and other responsibilities with respect to the Common Area and other property thereby annexed necessitate an increase in the Maximum Annual Assessment greater than otherwise permitted under this Section 8.7 without approval of the Members, Declarant may nevertheless increase such Maximum Annual Assessment, effective not earlier than the first sale to a retail purchaser of a Lot within the portion(s) so annexed, without the vote of the Members, so long as such increase is in an amount and in accordance with a revised budget approved by the Veterans Administration or the Federal Housing Administration (unless such agencies waive in writing their rights to approve such revised budget, in which event such approval shall not be required); such new Maximum Annual Assessment, if so approved, shall thereupon be substituted for the previously established Maximum Annual Assessment for the applicable fiscal year of the Association. Nothing herein shall obligate the Board to levy, in any fiscal year, Annual Assessments

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in the full amount of the Maximum Annual Assessment for such fiscal year, and the election by the Board not to levy Annual Assessments in the full amount of the Maximum Annual Assessments for any fiscal year shall not prevent the Board from levying Annual Assessments in subsequent fiscal years in the full amount of the Maximum Annual Assessment for such subsequent fiscal year (as determined in accordance with this Section 8.7). In the event that, for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the Maximum Annual Assessment for such fiscal year, the Board may, if in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during said fiscal year so long as the total of the Annual Assessments levied during said fiscal year does not exceed the Maximum Annual Assessment for such fiscal year.

8.8 Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments. Notwithstanding any other provision hereof or of the Articles, Bylaws or Association Rules, written notice of any meeting called for the purpose of: (a) approving the establishment of any Special Assessment, as required by Section 8.9 hereof; or (b) approving any increase in the Maximum Annual Assessment greater than that permitted by application of the formula as set forth in Section 8.7, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment or increase in the Maximum Annual Assessment, a quorum shall consist of sixty percent (60%) of the votes in each class of Members (whether represented in person or by valid proxy), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half (1/2) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first meeting.

8.9 Special Assessments. Unofficial Document In addition to the Annual Assessments, the Association may levy Special Assessments from time to time, provided, however, that any Special Assessment shall be effective only with the approval of not less than two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called and convened to consider such Special Assessment. Subject to Section 8.4, Special Assessments shall be allocated equally among all Lots.

8.10 Certificates. The Association shall, upon the written request of any Owner or the holder, insurer or guarantor of any Mortgage, and upon payment of such reasonable charge as may be determined by the Board, furnish to the requesting party a certificate, executed by an officer of the Association, stating the date to which Assessments with respect to such Owner's Lot have been paid and the amount, if any, of any Assessments which have been levied with respect to said Lot but which remain unpaid as of the date of such certificate; said certificate shall be binding upon the Association as to the matters set forth therein as of the date thereof.

8.11 Surplus Monies. Unless otherwise expressly determined by the Board, any surplus monies of the Association shall be held by the Association and placed in one or more reserve accounts as determined by the Board, and shall not be paid to the Owners or credited against the Owners' respective liabilities for Assessments.

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8.12 Declarant's Obligation for Deficiencies. So long as the Class B membership exists, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Assessments levied by the Association pursuant to this Declaration, to provide for: (a) the operation and maintenance of the Common Area and the recreational facilities located thereon; (b) the maintenance of adequate reserves; and (c) the performance by the Association of all other obligations of the Association under this Declaration or the Articles or Bylaws. Declarant's obligations under this Section 8.12 may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both.

8.13 Common Expenses Resulting from Misconduct. Notwithstanding any other provision of this Article 8, if any Common Expense is caused by the misconduct of any Owner (or of any Occupant, tenant, employee, servant, agent, guest or invitee for whose actions such Owner is responsible under applicable law), the Association may assess that Common Expense exclusively against such Owner and such Owner's Lot, which amount (together with any and all costs and expenses, including but not limited to attorneys' fees, incurred by the Association in recovering the same) shall be secured by the lien created pursuant to Section 8.3.

ARTICLE 9

ARCHITECTURAL STANDARDS; ARCHITECTURAL COMMITTEE

9.1 Appointment of Architectural Committee; Standing to Enforce. All property which is now or hereafter subject to this Declaration shall be subject to architectural, landscaping and aesthetic review as provided herein. This review shall be in accordance with this Article 9 and such standards as may be promulgated by the Architectural Committee, which is hereby established. Authority and standing on behalf of the Association to enforce in any court of competent jurisdiction decisions of the Architectural Committee and the provisions of this Article 9 shall be vested in the Board, provided, however, that so long as Declarant has the right to appoint the Architectural Committee under this Section 9.1, Declarant shall have the right, but not the obligation, to enforce decisions of the Architectural Committee and the provisions of this Article 9, on behalf of the Association, in courts of competent jurisdiction. So long as Declarant (or a trustee for the benefit of Declarant) owns any part of the Property or the Annexable Property, the Architectural Committee shall consist of three (3) individuals appointed by Declarant. At such time as either: (a) neither Declarant nor a trustee for the benefit of Declarant owns any part of the Property or the Annexable Property; or (b) Declarant Records a written waiver of its right to appoint the Architectural Committee, the Board shall appoint the members of the Architectural Committee, which shall have such number of members (but not less than three (3)) as the Board may elect, from time to time. Each member of the Architectural Committee appointed by the Board shall serve in such capacity until: (i) such member is removed by the Board; or (ii) such member resigns such position or dies. Prior to the appointment of the initial members of the Architectural Committee, and at any time when there is no one serving on the Architectural Committee (whether due to death, resignation or removal), the Board shall have and exercise any and all rights, powers, duties and obligations of the Architectural Committee.

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9.2 Jurisdiction of the Architectural Committee; Promulgation of Standards. The Architectural Committee shall have exclusive jurisdiction over all original construction and any modifications, additions or alterations to improvements on any portion of the Property (including, but not limited to, the construction or installation of, or modifications, additions or alterations to: (a) Dwelling Units and any other buildings or other structures; (b) landscaping; (c) fences and fence walls; (d) heating, ventilating, air conditioning and cooling units; (e) solar panels; (f) paint; and (g) any other construction, modification, addition or alteration affecting the exterior appearance of any structure or Lot). The Architectural Committee shall adopt, and may from time to time amend, supplement and repeal, architectural and landscaping standards and application procedures and shall make the same available to Owners, builders and developers who seek to engage in development of or construction upon any portion of the Property. Such standards and procedures shall interpret, implement and supplement this Declaration, and shall set forth procedures for Architectural Committee review. Such standards and procedures may include, without limitation, provisions regarding:

9.2.1 the size of Dwelling Units;

9.2.2 architectural design, with particular regard to the harmony of the design with surrounding structures and topography;

9.2.3 placement of buildings;

9.2.4 landscaping design, content and conformance with the character of the Property, and permitted and prohibited plants;

9.2.5 requirements concerning exterior color schemes, exterior finishes and materials;

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9.2.6 signage; and

9.2.7 perimeter and screen wall design and appearance.

Such standards and procedures shall have the same force and effect as the Association Rules. Further, after termination of Declarant's right to appoint the members of the Architectural Committee pursuant to Section 9.1, any and all amendments, supplements, repeals or replacements to or of such standards and procedures shall be subject to the approval of the Board.

9.3 Submission and Review of Plans. No original construction, modification, alteration or addition subject to the Architectural Committee's jurisdiction (including, but not limited to, landscaping) shall be commenced until it has been approved or is deemed approved by the Architectural Committee as provided herein. Any Owner or other Person seeking to construct or install any new improvements or landscaping or to make any modification, alteration or addition to any existing improvement (including, but not limited to, landscaping) upon any portion of the Property (or to cause same to be constructed, installed or made) shall first submit to the Architectural Committee detailed plans, specifications and elevations relating to the proposed construction, installation, modification, alteration or addition; said plans, specifications and elevations (including, but not limited to, a detailed site plan) shall be sent by: (a) personal delivery, in which case the Person delivering the same shall obtain a signed and dated receipt from the recipient thereof (in which

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event they shall be deemed received as of the date indicated by the recipient on such receipt); or (b) by U.S. mail, postage paid, certified mail, return receipt requested (in which event they shall be deemed received as of the date indicated on the return receipt). The Architectural Committee shall have forty-five (45) days after receipt of such plans, specifications and elevations to approve or disapprove of the proposed construction, installation, modification, alteration or addition or to request additional information, and, if the Architectural Committee disapproves, to give such Owner or other Person reasonably detailed written reasons for such disapproval. In the event the Architectural Committee fails either to approve or disapprove the proposed construction, installation, modification, alteration or addition (or to request additional information) within said forty-five (45) day period, such proposed construction, installation, modification, alteration or addition shall be deemed approved.

9.4 Obligation to Obtain Approval.

9.4.1 Except as otherwise expressly provided in this Declaration or the Architectural Committee's standards and procedures, without the prior written approval by the Architectural Committee of plans and specifications prepared and submitted to the Architectural Committee in accordance with the provisions of this Declaration and such standards and procedures:

(a) no improvements, alterations, repairs, excavation, grading, landscaping or other work shall be done which in any way alters the exterior appearance of any property or improvements thereon from their natural or improved state existing on the date such property first becomes subject to this Declaration; and

(b) no building, fence, exterior wall, pool, roadway, driveway or other structure, improvement or grading shall be commenced, erected, maintained, altered, changed or made on any Lot at any time.

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9.4.2 No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee in accordance with its standards and procedures and except in compliance with Section 9.12.

9.4.3 No material changes or deviations in or from the plans and specifications for any work to be done on the Property, once approved by the Architectural Committee, shall be permitted without approval of the change or deviation by the Architectural Committee.

9.4.4 No other item or matter required by this Declaration to be approved in accordance with this Article 9 shall be done, undertaken or permitted until approved by the Architectural Committee.

9.5 Changes to Interiors of Dwelling Units or Other Structures. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his, her or its Dwelling Unit or other structure on such Owner's Lot or to paint the interior of his, her or its Dwelling Unit or such other structure any color desired, except to the extent such remodeling or painting is visible from outside such Dwelling Unit or other structure or affects the exterior appearance of such Dwelling Unit or other structure.

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9.6 Other Approvals; Liability. No approval by the Architectural Committee of any proposed construction, installation, modification, addition or alteration shall be deemed to replace or be substituted for any building permit or similar approval required by any applicable governmental authority, nor shall any such approval be deemed to make the Architectural Committee (or the Board or the Association) liable or responsible for any damage or injury resulting or arising from any such construction, modification, addition or alteration. None of Declarant, the Association, the Board or the Architectural Committee (nor any member thereof) shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

9.6.1 the approval or disapproval of any plans, drawings or specifications, whether or not defective;

9.6.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or

9.6.3 the development of any Lot.

9.7 Fee. The Board may establish a reasonable processing fee to defer the costs of the Architectural Committee in considering any request for approvals submitted to the Architectural Committee or for appeals to the Board, which fee shall be paid at the time the request for approval or review is submitted.

9.8 Inspection. Any member or authorized consultant of the Architectural Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot, after reasonable notice to the Owner or Occupant of such Lot, in order to inspect the improvements constructed or being constructed on such Lot to ascertain that such improvements have been, or are being, built in compliance with this Declaration, the standards and procedures adopted by the Architectural Committee and any approved plans, drawings or specifications.

9.9 Waiver. Approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring approval of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

9.10 Appeal to Board. Except as provided in this Section 9.10, any Owner or Occupant aggrieved by a decision of the Architectural Committee may appeal the decision to the Board in accordance with procedures to be established in the Architectural Committee's standards and procedures. In the event the decision of the Architectural Committee is overruled by the Board on any issue or question, the prior decision of the Architectural Committee shall be deemed modified to the extent specified by the Board. Notwithstanding the foregoing, until termination of Declarant's right to appoint the members of the Architectural Committee pursuant to Section 9.1, no decision of the Architectural Committee may be appealed to the Board.

9.11 Nonapplicability to Declarant. The provisions of this Article 9 shall not apply to any portions of the Property owned by Declarant (or by a trustee for the benefit of Declarant) or any Person affiliated with Declarant so long as any improvements constructed thereon (or any additions,

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modifications or alterations to any such improvements) are constructed or made in a good and workmanlike fashion and are generally comparable in terms of quality of construction to other improvements theretofore constructed by Declarant or any Person affiliated with Declarant on the Property (or on other property adjacent to or near the Property). Further, this Article 9 may not be amended without Declarant's written consent so long as Declarant (or a trustee for the benefit of Declarant) owns any of the Property or the Annexable Property.

9.12 Landscaping. All Lots, excluding driveways, parking areas and areas covered by structures, and excluding that portion of the Lot, if any, which is enclosed by a perimeter wall around the rear yard, shall be landscaped in a manner and using plants and soil approved in advance by the Architectural Committee. No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon any Lot except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee in accordance with this Article 9 and the Architectural Committee's standards and procedures. No material changes or deviations in or from the plans and specifications for any work to be done on any Lot, once approved by the Architectural Committee, shall be permitted without approval of the change or deviation by the Architectural Committee. Neither this Section 9.12 nor Sections 9.3 or 9.4 above shall be construed to prevent normal landscape maintenance or the replacement of dead or diseased plants with other similar plants (so long as the replacement plants are permitted by the Architectural Committee's standards and procedures).

ARTICLE 10 Unofficial Document

USE RESTRICTIONS AND OTHER COVENANTS, CONDITIONS AND EASEMENTS

10.1 Residential and Recreational Purpose. The Property shall be used only for residential, recreational and related purposes. No Lot or any other part of the Property shall be used, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, vending or other similar purpose, except for use by Declarant (or an affiliate or assignee of Declarant), for a period not to exceed ten (10) years from the conveyance by Declarant of the first Lot to a retail purchaser, directly in connection with construction and sales activities with respect to the Property (including, but not limited to, maintenance and operation of model homes, sales offices and signs advertising the Property or portions thereof).

10.2 Garages and Driveways. The interior of all garages situated upon the Property shall be maintained by the respective Owners or Occupants thereof in a neat, clean and sightly condition. Such garages shall be used for parking vehicles and storage only, and shall not be used or converted for living or recreational activities. All driveways on Lots shall be of concrete construction.

10.3 Temporary Structures. No temporary residence, structure or garage shall be placed or erected upon any part of the Property (except as may otherwise be permitted by Section 10.4 or Section 10.21). Except with the express written approval of Declarant, no Dwelling Unit or other structure on any Lot shall be occupied in any manner while in the course of original construction or prior to issuance by the appropriate local governmental authority of a certificate of occupancy (or other similar document) with respect to such Dwelling Unit or other structure.

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10.4 New Construction. All buildings or structures erected on the Property shall be of new construction and the buildings and structures shall not have been moved to the Property from other locations (except for temporary construction and/or sales facilities placed or maintained on the Property by Declarant or an affiliate or assignee of Declarant in connection with the construction and sales activities of Declarant or such affiliate or assignee of Declarant).

10.5 Signs. No billboards or signs of any type or character shall be erected or permitted on any part of the Property or on any Lot, except for signs used by Declarant (or an affiliate or assignee of Declarant) to advertise the Property (or to identify builders, contractors or lenders) during the construction and sales period. Nothing herein shall be deemed to prohibit attachment to the exterior of a Dwelling Unit of a single nameplate and a single address plate identifying the occupant and the address of such Dwelling Unit or the placing upon the exterior of any Dwelling Unit (or upon the Lot containing the Dwelling Unit) of a single "For Sale" or "For Lease" sign, provided that such nameplates and address plates shall be subject to the rules and regulations of the Architectural Committee, and except that such "For Sale" or "For Lease" sign shall not have dimensions exceeding eighteen (18) inches by twenty-four (24) inches. Further, nothing herein shall be deemed to prohibit installation and maintenance of directional signs, subdivision identification signs, street signs or similar signs as may be approved by Declarant or by the Architectural Committee for installation or maintenance by the Association.

10.6 Heating, Ventilating and Air Conditioning Units. No heating, air conditioning or evaporative cooling units or equipment shall be placed, constructed or maintained upon the Property, including, but not limited to, upon the roof or exterior walls of any structure on any part of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened from view from any adjacent properties by a parapet wall which conforms architecturally with such structure; or (b) in all other cases, such unit or equipment is attractively screened or concealed from ground level view from adjacent properties, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and approval of the Architectural Committee.

10.7 Solar Collecting Panels or Devices. Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the Architectural Committee pursuant to Article 9 above, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot), so long as either: (a) such solar collecting panels and devices are placed, constructed and maintained so as not to be visible from ground level view from adjacent properties; or (b) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the Architectural Committee may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a person six feet tall standing at ground level on adjacent properties.

10.8 Antennas, Poles and Towers. No television, radio, shortwave or other antenna, pole or tower shall be placed, constructed or maintained upon the Property (including, but not limited

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to, upon the roof or exterior walls of any Dwelling Unit or other structure), unless: (a) where such antenna, pole or tower is installed upon the roof of a Dwelling Unit or other structure, such antenna, pole or tower is fully screened and concealed from view from adjacent properties by a parapet wall which conforms architecturally with the structure of such Dwelling Unit or other structure; or (b) in all other cases, such antenna, pole or tower is fully and attractively screened or concealed from view from adjacent properties, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and approval of the Architectural Committee. Notwithstanding the foregoing, the Board may (but shall not be obligated to) install (or permit to be installed) upon the Common Area a television and/or radio "dish-type" antenna designed and intended to serve all Owners and Occupants of the Property (or as many of such Owners and Occupants as elect to use such service).

10.9 Basketball Goals or Similar Structures. No basketball goal or similar structure or device (whether mounted on a pole, wall or roof) shall be placed or constructed upon the front yard, front elevation or front roof surface of any structure on any part of the Property (except upon the Common Area). For purposes of the foregoing sentence, the term "front" shall be deemed to mean visible from ground level view from the street(s) running immediately in front of or along the side of a Dwelling Unit or other structure. Notwithstanding the foregoing, a basketball goal may be placed on a Lot in a location where such goal would be visible from a street running along the side of a Dwelling Unit so long as: (a) such goal is not visible from a street running in front of such Dwelling Unit; (b) such goal is located within an enclosed rear yard on such Lot; and (c) the location of, and any proposed methods of screening from view, such goal are approved in advance, in writing, by the Architectural Committee.

10.10 Tanks. No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on the Property ^{Unofficial Document} such tanks are either: (a) buried underground; or (b) of such size and height, in such location and attractively screened from view from adjacent properties in such manner, as may be required by the Architectural Committee. Nothing herein shall be deemed to prohibit use or storage upon the Property of propane or similar fuel tanks with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace.

10.11 Vehicles.

10.11.1 No private passenger automobiles or pickup trucks shall be parked upon the Property or any roadway adjacent thereto except within a garage, in a private driveway appurtenant to a Dwelling Unit, or within areas designated for such purpose by the Board.

10.11.2 No other vehicles (including, but not limited to, mobile homes, motor homes, boats, recreational vehicles, trailers, trucks, campers, permanent tents or similar vehicles or equipment) shall be kept, placed or maintained upon the Property or any roadways adjacent thereto, except: (a) within a fully enclosed garage appurtenant to a Dwelling Unit; or (b) in such areas and subject to such rules and regulations as the Board may designate and adopt.

10.11.3 No vehicle (including, but not limited to, those enumerated in Subsections 10.11.1 and 10.11.2) shall be constructed, reconstructed or repaired upon the Property or any roadway adjacent thereto except within a fully enclosed garage.

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10.11.4 No motor vehicles of any kind which are not in operating condition shall be parked in any unenclosed parking areas (including, but not limited to, private driveways appurtenant to a Dwelling Unit).

10.11.5 The provisions of this Section 10.11 shall not apply to vehicles of Declarant or its employees, agents, affiliates, contractors or subcontractors during the course of construction activities upon or about the Property.

10.12 Underground Facilities. No cesspool or well may be dug or installed without the prior written approval of the Board. No part of the Property shall be used for purposes of boring, mining, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth (except to the limited extent required in connection with the normal construction activities of Declarant or an affiliate or assignee of Declarant during the applicable construction period).

10.13 Outdoor Burning. There shall be no outdoor burning of trash or other debris, provided, however, that the foregoing shall not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills or outdoor fireplaces.

10.14 Sanitation. Garbage and refuse facilities, containers and the like shall be attractively screened and camouflaged in such manner as to conceal them from the view of neighboring Lots, Dwelling Units, property, roads or streets (except during reasonable periods to allow for collection by the appropriate municipal or private sanitation service). All equipment for the storage or disposal of garbage or other waste shall be kept in a clean and sanitary condition. All rubbish, trash and garbage shall be kept only in containers meeting applicable municipal sanitation requirements (and any applicable reasonable ^{Unofficial Document} regulations of the Association), shall be regularly removed from the Property and shall not be allowed to accumulate thereon.

10.15 Fences, Interferences and Obstructions.

10.15.1 All fences shall be of block construction (except as may be otherwise permitted with the prior written consent of the Architectural Committee) and, except as otherwise approved by the Architectural Committee, shall be painted or colored to match the exterior of the structure(s) enclosed by or upon the same Lot as such fence. No fence shall exceed six and one-half (6 1/2) feet in height, provided that no fence within fifteen (15) feet of the front property line of a Lot shall exceed three (3) feet in height (provided that the Architectural Committee shall have the authority to establish and enforce even more restrictive limitations on the height, locations and appearance of fences and fence walls, either in individual cases or as a general restriction on portions or all of the Property, where necessary or appropriate, in the reasonable judgment of the Architectural Committee, to comply with applicable zoning, building or public safety ordinances). The foregoing shall not apply to boundary walls or fences (if any) constructed by Declarant along property lines bounding public rights-of-way, provided, however, that such boundary walls or fences shall be constructed so as to comply with applicable municipal zoning and other laws and ordinances. No fence shall be permitted to interfere with existing recorded restrictions, drainageways or easements. Except as otherwise provided by applicable law or governmental rule or regulation, and subject to any applicable restrictions or requirements set forth in any recorded plat of all or any part of the Property, fences may be constructed in or over a recorded utility easement, provided, however, that should the

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utility companies ever require access to such easement, it shall be the responsibility of the Owner of the applicable Lot, at his, her or its sole expense, to remove and replace such fence.

10.15.2 No structure, shrubbery or other vegetation shall be permitted to exist on any Lot or other portion of the Property, the height or location of which shall be deemed by the Architectural Committee either to constitute a traffic hazard or to be unattractive in appearance or unreasonably detrimental to adjoining Property. As an aid to freer movement of vehicles at and near street intersections and in order to protect the safety of pedestrians, property and the operators of vehicles, the Board or Architectural Committee may impose further limitations on the height of fences, walls, gateways, ornamental structures, hedges, shrubbery and other fixtures, and construction and planting on corner Lots at the intersection of two or more streets or roadways.

10.16 Nuisance. No rubbish or debris of any kind shall be placed or permitted to accumulate for any unreasonable length of time on any portion of the Property, and no odors shall be permitted to arise therefrom, so as to render the Property or any portion thereof unsanitary, unsightly or offensive or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Occupants. No noxious destructive or offensive activity, or any activity constituting an unreasonable source of annoyance, shall be conducted on any Lot or on the Common Area. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except ordinary intercom systems or security devices used exclusively for security purposes, shall be located, used or placed on the Property. The Board in its discretion shall have the right to determine the existence of any such activity or item. The Association shall have the standing and authority to institute legal proceedings to abate such activity or to secure the removal of such item. Furthermore, the Board shall have the right to remove any such activity or item at the expense of the Owner responsible for the nuisance (or at the expense of the Owner whose tenant, Occupant or guest is responsible for such activity or item). Each Owner and Occupant shall refrain from any act on or use of his, her or its Lot or the Common Area which could reasonably cause embarrassment, discomfort or annoyance to other Owners or Occupants, and the Board shall have the power to make and enforce reasonable rules and regulations in furtherance of this provision.

10.17 Drainage Alteration; Easements. No vegetation (except suitable ground cover) may be planted or permitted to remain on areas subject to drainage easements, as shown on Recorded plats, in such manner as to interfere with drainage or which shall be deemed by the Board to be a detriment to utilities located under or near such vegetation. Except as otherwise provided herein, or by applicable governmental rule, regulation or ordinance, the owner of property subject to Recorded easements shall be responsible for maintaining said property.

10.18 Clothes-Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any part of the Property unless they are erected, placed or maintained exclusively within a fenced yard or otherwise concealed and shall not be visible to a person six feet tall standing at ground level on neighboring property.

10.19 Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property, provided, however, that nothing herein shall be construed as prohibiting the keeping of a reasonable number of ordinary household pets in or on a Lot, subject to rules and regulations adopted by the Board, provided that such pets are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no pets may be kept upon the Property or on or in any Lot

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which, in the opinion of the Board, result in any annoyance or are obnoxious to Owners or Occupants of other Lots in the vicinity.

10.20 Leasing; Obligations of Tenants and Other Occupants.

10.20.1 All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws and the Association Rules. All tenants shall be subject to the terms and conditions of this Declaration, the Articles, the Bylaws and the the Association Rules as though such tenant were an Owner (except that such tenant shall not have any voting rights appurtenant to the Lot occupied by such tenant except pursuant to an express written assignment complying with Subsection 3.2.1). Each Owner shall cause his, her or its tenants or other Occupants to comply with this Declaration, the Articles, the Bylaws and the Association Rules and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or Occupants, notwithstanding the fact that such tenants or Occupants are also fully liable for any violation of each and all of those documents.

10.20.2 In the event that a tenant or other Occupant violates any provision of this Declaration, the Articles, the Bylaws or the Association Rules, the Association shall have the power to bring an action or suit against such tenant or other Occupant to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity. The Association's costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest as provided in Section 12.8, shall be reimbursed by the tenant or other Occupant to the Association (or, in the absence of reimbursement by the tenant or other Occupant, or at the election of the Board, by the Owner of the Lot occupied by such tenant or other Occupant) and constitute a lien on the applicable Lot which shall have the priority, and may be enforced in the manner, described in Section 8.3.

10.20.3 The Board shall also have the power to suspend the right of the tenant or other Occupant to use the recreational facilities on or constituting a part of the Common Area for any violation by the tenant or other Occupant of any duty imposed under this Declaration, the Articles, the Bylaws or the Association Rules and, where approved by Members holding a majority of the votes in each class of Members represented in Person or by valid proxy at a meeting of Members duly called for such purpose, to impose reasonable monetary fines upon the tenant or the Owner of the applicable Lot, or both. No suspension hereunder of the right of a tenant or other Occupant to use the recreational facilities on or constituting part of the Common Area may be for a period longer than sixty (60) days except where the tenant or other Occupant fails or refuses to cease or correct an on-going violation or commits the same or another violation, in which event such suspension may be extended for additional periods not to exceed sixty (60) days each until such violation ceases or is corrected; the foregoing limitation shall not affect or prevent termination of the applicable lease if permitted by the terms of said lease or otherwise by applicable law.

10.20.4 No Owner may lease less than his, her or its entire Lot. No Lot may be leased for a period of less than thirty (30) days. Upon leasing his, her or its Lot, an Owner shall promptly notify the Association of the commencement and termination dates of the lease and the names of each tenant or other Person who will occupy the Lot during the term of the lease.

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10.20.5 The provisions of this Section 10.20 shall not apply to Declarant's use of Lots owned by (or leased to) Declarant as a model home or office or for marketing purposes pursuant to Section 10.1.

10.21 Storage and Tool Sheds or Structures. No storage or tool sheds or similar structures shall be placed, erected or maintained upon any part of the Property except: (a) where such storage or tool shed or similar structure is constructed as an integral part of a Dwelling Unit (including materials, color and the like); or (b) where such storage or tool shed or similar structure is temporarily placed on the Property by Declarant or an affiliate or assignee of Declarant in connection with construction activities of Declarant or such affiliate or assignee of Declarant. Notwithstanding part (a) of this Section 10.21, an Owner or other Person shall be permitted to erect, on his, her or its Lot, a storage building which is not attached to the Dwelling Unit on that Lot, so long as the storage building meets all of the following requirements:

- (a) The storage building shall be stuccoed and painted to match the Dwelling Unit on the same Lot;
- (b) The roof of the storage building shall be tiled to match the roof of the Dwelling Unit on the same Lot;
- (c) The storage building shall be no higher than eight (8) feet at its highest point;
- (d) The storage building shall comply with all laws, ordinances and regulations (including, but not limited to, city set back requirements); and
- (e) The storage ^{Unofficial Document}building shall not be attached at any point to any fence (including any block wall fence).

Any Owner or other Person who wishes to erect such a storage building on his, her or its Lot must still comply with all other provisions of this Declaration and, in particular, shall submit plans for the proposed storage building to the Architectural Committee for review in accordance with Article 9 of this Declaration, and shall not commence erection or construction of such storage building until such plans are approved by the Architectural Committee in accordance with Article 9 of this Declaration.

10.22 Landscaping and Maintenance. Within ninety (90) days of acquiring a Lot, each Owner (other than Declarant) shall landscape, if not already landscaped, such Lot and any public right-of-way areas (other than sidewalks or bicycle paths) lying between the front or side boundaries of such Lot and an adjacent street, except where the installation or maintenance (or both) of landscaping within any public right-of-way area is designated on a Recorded plat Recorded by or with the written approval of Declarant as being the responsibility of the Association. Each Owner shall maintain the landscaping on such Owner's Lot and any public right-of-way areas lying between the front or side boundaries of such Lot and an adjacent street and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping which have been damaged. Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit in accordance with standards prescribed by the Board and otherwise in a manner and to a level not less than the standards of quality established by the Board with respect to the quality, quantity and

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frequency of watering, mowing, weeding, trimming, fertilizing, painting and the like. In the event any Owner fails to perform the obligations provided herein, the Association may, at the discretion of the Board, perform those obligations at the expense of such Owner, which expense, together with attorneys' fees and interest as provided in Section 12.8, shall be secured by the lien on such Owner's Lot established by Section 8.3. The provisions of this Section 10.22 shall not apply to any Lot or other property owned by Declarant.

10.23 Roof Materials. The roof of each Dwelling Unit (or of any building containing Dwelling Units) within the Property shall consist of concrete or clay tile, unless such Dwelling Unit has a flat roof with no pitch (i.e., a horizontal roof).

10.24 Encroachments. There are reserved and granted for the benefit of each Lot, over, under and across each other Lot and the Common Area, and for the benefit of the Common Area, over, under and across each Lot, non-exclusive easements for encroachment, support, occupancy and use of such portions of Lots and/or Common Area as are encroached upon, used and occupied as a result of any original construction design, accretion, erosion, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any improvements on a Lot or on the Common Area are partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement(s) shall exist for as long as the encroachment exists; provided, however, that no easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may but need not be cured by repair and restoration of the structure.

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10.25 Developer's Easement for Annexable Property. Declarant shall have, and hereby expressly reserves, for itself and its agents, successors and assigns, an easement over and across the Common Area for the purposes of reasonable ingress to and egress from, over and across the Property, including private roads and pathways, to the Annexable Property until all of the Annexable Property is fully developed and sold to retail purchasers.

10.26 Miscellaneous. The Board, in its good faith discretion, is hereby authorized to grant such waivers of the restrictions contained in this Article 10 as it shall deem appropriate in the circumstances, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of development contemplated by this Declaration. In addition, all portions of the Property shall continue at all times to be subject to any and all applicable zoning laws and ordinances, provided, however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control.

ARTICLE 11

PARTY WALLS

11.1 General Rules of Law to Apply. Each wall or fence which is located between two Lots or between a Lot and Common Area shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article 11, the general rules of law regarding party walls and

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liability for property damages due to negligent or willful acts or omissions shall apply thereto. (For purposes of this Article 11 only, in the case of a party wall between a Lot and Common Area, in interpreting the provisions of this Article the Common Area bounded by such wall shall be deemed to be a "Lot" and the Association shall be deemed to be the "Owner" of such "Lot.")

11.2 Repair and Maintenance. No Owner or Occupant of any Lot (or any tenant, guest, invitee, employee or agent of such Owner or Occupant) shall do or permit any act (or omit to do any act) that will or does damage, destroy or impair the structural soundness or integrity of any party wall, or which would cause any party wall to be exposed to the elements, and, in the event any such Owner, Occupant, tenant, guest, invitee, employee or agent does or permits any such act (or so omits to do any act), such Owner's or Occupant's liability with respect to such damage, destruction, impairment or exposure shall be determined in accordance with applicable law.

11.3 Sharing of Repair and Maintenance. In the event any repair, maintenance or reconstruction of any party wall shall be necessary (other than due to the negligence or willful act or omission of the Owner or Occupant of one Lot, or such Owner's or Occupant's tenants, guests, invitees, employees or agents) the cost thereof shall be borne equally by the Owners and/or Occupants of the Lot(s) having in common such party wall, and in the event any Owner (or Occupant) fails or refuses timely to pay such Owner's (or Occupant's) share of such cost, the other Owner (or Occupant) shall have the right to pay in full such cost and recover from such Owner (or Occupant) such Owner's (or Occupant's) share of such cost (together with interest as provided in Section 12.8).

11.4 Consents to Modification. No Owner or Occupant shall alter or modify any party wall in any respect without having first obtained the written consent of the Owner of the other Lot adjoining such party wall, provided that such consent shall not be required in the case of repair or restoration of such party wall to its condition Unofficial Document by damage or destruction if the negligence or willful act or omission of the Owner or Occupant of such other Lot was the cause of such damage or destruction and such Owner or Occupant fails or refuses to repair or restore such party wall promptly upon the request of the other Owner or Occupant. Any consent required by this Section 11.4 shall be in addition to and not in substitution for the consents or approvals of the Architectural Committee required by this Declaration or of any municipal or other governmental body having jurisdiction over the Property.

ARTICLE 12

GENERAL PROVISIONS

12.1 Term. The covenants, conditions and restrictions of this Declaration: (a) shall run with and bind the Property; (b) shall inure to the benefit of and shall be enforceable by the Association or by the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns; and (c) shall remain in full force and effect until January 1, 2042, at which time said conditions, covenants and restrictions, unless revoked by an affirmative vote of: (i) Members holding not less than sixty-seven percent (67%) of all Class A votes then entitled to be cast; and (ii) so long as the Class B membership is in existence, Declarant, shall automatically be extended for successive periods of twenty-five (25) years each, until revoked in the manner provided above. Notwithstanding any such revocation of this Declaration, each Owner of a

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Lot (and such Owner's Occupants, tenants, agents, guests and invitees) shall nevertheless have a permanent easement across the Common Area for access to such Lot and for access to and use of such recreational facilities as may exist on the Common Area at the time of such revocation.

12.2 Amendment. Except as otherwise provided herein (and subject to the provisions of Sections 12.10, 12.11, 12.12, and 12.13), this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of: (i) Members holding not less than sixty-seven percent (67%) of all Class A votes then entitled to be cast; and (ii) so long as the Class B membership is in existence, Declarant. No amendment to this Declaration shall be effective unless and until such amendment is Recorded. In addition to and notwithstanding the foregoing: (a) so long as the Class B membership exists, no amendment to this Declaration shall be effective without the prior approval of the Federal Housing Administration and the Veterans Administration; and (b) no amendment of a material nature to this Declaration (or to the Articles or the Bylaws) shall be effective unless approved by Eligible Mortgage Holders representing at least fifty-one percent (51%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders. A change to any of the following would be considered to be a change of a material nature:

- 12.2.1 provisions relating to voting rights in the Association;
- 12.2.2 provisions relating to Assessments, Assessment liens or subordination of Assessments;
- 12.2.3 provisions relating to reserves for maintenance and repairs;
- 12.2.4 provisions relating to Owner's rights to use the Common Area;
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- 12.2.5 boundaries of any Lot;
- 12.2.6 conversion of any Lot into Common Area or vice versa;
- 12.2.7 addition or annexation of property to, or withdrawal, removal or deletion of property from, the Property, or addition or annexation of any property to, or withdrawal, removal or deletion of any property from, the Common Area (except to the limited extent certain additions, annexations, withdrawals, removals or deletions are expressly permitted without approval of or notice to the holders, insurers or guarantors of any Mortgage by Article 6);
- 12.2.8 provisions relating to insurance or fidelity bonds;
- 12.2.9 provisions relating to the leasing of Lots (or Dwelling Units thereon);
- 12.2.10 provisions relating to the right of an Owner to sell or transfer such Owner's Lot;
- 12.2.11 restoration or repair of any structures or improvements on the Common Area following a hazard damage or condemnation in a manner other than as specified in this Declaration;

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12.2.12 any action to dissolve or otherwise terminate the Association or the legal status of the Property after substantial destruction or condemnation of improvements on the Property occurs; or

12.2.13 any provisions that expressly benefit the holders, insurers or guarantors of Mortgages.

An Eligible Mortgage Holder shall be deemed to have approved a proposed material change if such Eligible Mortgage Holder fails to submit to the Association a response to a written notice of the proposed material change within thirty (30) days after its receipt of such notice, so long as such notice is sent by certified or registered mail, return receipt requested.

12.3 Indemnification. The Association shall indemnify each and every officer and director of the Association (including, for purposes of this Section, former officers and directors of the Association) against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or director of the Association in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an officer or director of the Association, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except indirectly to the extent that such officers or directors may also be Members of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such officer and director ^{Unofficial Document} free and harmless from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director of the Association, may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any director or officer (or former director or officer) of the Association who may be entitled to indemnification hereunder to enable such Person to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Person by reason of his or her being, or having been, an officer or director of the Association. In the event it is ultimately determined that a current or former officer or director to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section 12.3 or otherwise under the Articles, Bylaws or applicable law, such current or former officer or director shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

12.4 Easements for Utilities. There is hereby reserved to the Association the power to grant blanket easements upon, across, over and under all of the Common Area for installation, replacement, repair, and maintenance of master television antenna systems, security and similar systems, and all utilities, including, but not limited to, water, sewer, telephone, cable television, gas and electricity, and for delivering or providing public or municipal services such as refuse collection and fire and other emergency vehicle access (which easements shall also include appropriate rights of ingress and egress to facilitate such installation, replacement, repair and maintenance, and the delivery or provision of such public, municipal or emergency services), provided that no such easement

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shall interfere with a Dwelling Unit or its reasonable use or with Declarant's construction and sales activities and such easements shall require the holder of the easement to repair any damage caused to the property of any Owner. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate Recordable document, the Association shall have the right to grant such easement on said property in accordance with the terms hereof.

12.5 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Area, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Area or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot or Parcel (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Area) which may or may not be subject to this Declaration.

12.6 Severability, Interpretation, Exhibits, Gender. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. The provisions hereof shall be construed and interpreted with reference to the laws of the State of Arizona. References in this Declaration to Articles, Sections and Subsections shall be deemed to be references to the specified Articles, Sections and Subsection of this Declaration (unless otherwise specifically stated), whether or not phrases such as "of this Declaration," "hereof" or "herein" are used in connection with such references. Any Exhibits referred to in this Declaration are hereby incorporated herein ^{by reference} and fully made a part hereof. Where the context hereof so requires, any personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all genders, and the singular shall include the plural and vice versa. Titles of Articles and Sections are for convenience only and shall not affect the interpretation hereof.

12.7 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

12.8 Enforcement. Subject to Section 9.1, the Association shall have the standing and power to enforce the provisions of this Declaration, the Articles, the Bylaws and the Association Rules, and the provisions of any other Recorded document pertaining to any Lot or Lots, and its costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest thereon from the date the costs are expended at a rate equal to the greater of: (a) ten percent (10%) per annum; or (b) the annual rate of interest then in effect for new residential first priority mortgage loans guaranteed by the Veterans Administration, shall constitute a lien on all Lots owned by the Owner or Owners against whom the action is taken (or against whose Occupants the action is taken), which lien shall have the priority and may be enforced in the manner described in Section 8.3. Further, any Owner shall have the standing and the right to bring an action against the Association for any violation or breach by the Association of any provision hereof or of the Articles or the Bylaws. In addition, any Owner or Owners shall have the standing and power to enforce the provisions of this

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Declaration, the Articles and the Bylaws, and the prevailing party or parties in any action by an Owner or Owners to enforce any such provisions shall be entitled to recover from the other party or parties its or their costs in such action (including reasonable attorneys' fees), together with interest thereon at a rate equal to the greater of: (a) ten percent (10%) per annum; or (b) the annual rate of interest then in effect for new residential first priority loans guaranteed by the Veterans Administration, and shall further be entitled to have all such costs (including such interest) included in any judgment awarded to the prevailing party or parties in such action. Failure by the Association or by any Owner to take any such enforcement action shall in no event be deemed a waiver of the right to do so thereafter.

12.9 Property Held in Trust. Any and all portions of the Property (and of the Annexable Property) which are now or hereafter held in a subdivision or similar trust or trusts (or similar means of holding title to property), the beneficiary of which trust(s) is Declarant, shall be deemed for all purposes under this Declaration to be owned by Declarant and shall be treated for all purposes under this Declaration in the same manner as if such property were owned in fee by Declarant. No conveyance, assignment or other transfer of any right, title or interest in or to any of such property by Declarant to any such trust (or the trustee thereof) or to Declarant by any such trust (or the trustee thereof) shall be deemed for purposes of this Declaration to be a sale of such property or any right, title or interest therein.

12.10 FHA/VA Approval. So long as the Class B membership is in existence, the following actions shall not be taken without the prior approval of the Federal Housing Administration and the Veterans Administration: (a) annexation of additional properties to the Property (except to the extent such annexation is in accordance ^{Unofficial Document} with a plan of annexation or expansion previously approved by such agencies); (b) dedication of any part or all of the Common Area; or (c) amendment of this Declaration.

12.11 Notices to Certain Mortgage Holders, Insurers or Guarantors. The Association shall give timely written notice of any of the following actions, events or occurrences to any holder, insurer or guarantor of a Mortgage who or which, prior to such action, event or occurrence, shall have made written request to the Association for such notice (which written request shall state the name and address of such holder, insurer or guarantor and the Lot number or street address of the Lot to which the applicable Mortgage pertains):

12.11.1 Any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing the applicable Mortgage;

12.11.2 Any delinquency lasting sixty (60) days or more in payment of any Assessments or other charges owed to the Association by the Owner of the Lot securing the applicable Mortgage, or any other breach or default hereunder by the Owner of the Lot securing the applicable Mortgage which is not cured within sixty (60) days after notice thereof from the Association to such Owner;

12.11.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or

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12.11.4 Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders, as provided in Section 12.2.

12.12 Dissolution or Termination of the Association or Legal Status of the Property. No action to dissolve or otherwise terminate the Association or the legal status of the Property for any reason other than the substantial destruction or condemnation of the Property shall be taken without the consent of Eligible Mortgage Holders representing not less than sixty-seven percent (67%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

12.13 Amendments Requested by Governmental Agency. Notwithstanding any other provision of this Declaration, Declarant shall have the right to amend all or any part of this Declaration to such extent and with such language as may be requested by the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or other governmental or quasi-governmental agency which issues, guarantees, insures or purchases Mortgages (or securities or other debt instruments backed or secured by Mortgages), or otherwise governs transactions involving Mortgages or instruments evidencing same, or otherwise governs development of the Property or the Annexable Property, as a condition to such agency's approval of this Declaration, the development encompassing the Property or any subdivision constituting a part of the Property. Any such amendment shall be effected by Declarant's Recording an instrument executed by Declarant and appropriately acknowledged, specifying the governmental or quasi-governmental agency requesting such amendment and setting forth the appropriate amendatory language. Recording of such amendment shall constitute conclusive proof of such governmental or quasi-governmental agency's request for such amendment. Such amendment shall be effective, without the consent or approval of any other Person, on and as of the date the same is Recorded, and shall thereupon and thereafter be binding upon any and all Owners or other Persons having any interest in all or any part of the Property. Except as expressly provided in this Section, neither Declarant nor any other Person(s) shall have the right to amend this Declaration except in accordance with and pursuant to the other provisions and requirements of this Declaration.

12.14 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

12.15 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same as or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

12.16 Temporary Sign Easement. Declarant hereby reserves to itself and its agents a temporary easement over, upon and across those portions of the Common Area adjacent to publicly

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dedicated streets and roadways for purposes of installing and maintaining signs identifying Persons building upon or developing portions of the Property. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon the Property, but in no event later than ten (10) years after the date this Declaration is Recorded.

12.17 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of this Declaration, the Articles, the Bylaws or the Association Rules. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Lot Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

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12.18 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Warner Ranch Phase 3 can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to this developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold Declarant harmless therefrom.

12.19 Declarant's Rights. Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided, further, that no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly Recorded. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the Annexable Property in any manner whatsoever. Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units and sales offices, and Declarant shall have an easement for

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access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots owned by Declarant and any clubhouse or community center which may be owned by the Association, as models, sales offices and other purposes related to Declarant's sales activities on the Property and the Annexable Property. So long as Declarant continues to have rights under this Section, no Person shall Record any subdivision plat or map, any declaration of covenants, conditions and restrictions, any declaration of condominium or any similar instrument affecting any portion of the Property without Declarant's review and written consent thereto, and any attempted Recordation without compliance herewith shall result in such subdivision plat or map, declaration of covenants, conditions and restrictions, declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by Recorded consent signed by Declarant. This Section may not be amended without the express written consent of Declarant; provided, however, the rights contained in this Section shall terminate upon the earlier of: (a) ten (10) years from the date this Declaration is Recorded; or (b) upon Recording by Declarant of a written statement that all sales activity has ceased.

12.20 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration, no provision of this Declaration (including but not limited to, this Section) which grants to or confers upon Declarant any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as Declarant (or a trustee for the benefit of Declarant) owns any portion of the Property or any portion of the Annexable Property, without the express written consent of Declarant.

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12.21 References to VA and FHA. In various places throughout this Declaration, references are made to the Veterans Administration ("VA") and the Federal Housing Administration ("FHA") and, in particular, to various consents or approvals required of either or both of such agencies. These references are included so as to cause this Declaration to meet certain requirements of such agencies should Declarant submit the Warner Ranch Phase 3 project (or portions thereof) for approval by either or both of such agencies. However, Declarant shall have no obligation to submit the Warner Ranch Phase 3 project (or any portion thereof) for approval by either or both of such agencies, and Declarant shall have full discretion whether to submit the Warner Ranch Phase 3 project (or any portion thereof) for approval by either or both of such agencies. Unless and until the VA or the FHA shall have approved the Warner Ranch Phase 3 project, and at any time during which both: (a) such approval, once given, shall be revoked, withdrawn, cancelled or suspended; and (b) there are no outstanding mortgages or deeds of trust Recorded against any Lot or other portion of the Property to secure payment of an FHA-insured or VA-guaranteed loan, all references herein to required approvals or consents of such agencies shall be deemed null and void and of no force or effect.

12.22 Affiliates of Declarant. For the specific purposes enumerated below in this Section 12.22 any and all Lots and other portions of the Property owned by any one or more of the following Persons shall be treated as if owned by Declarant unless and to the extent otherwise expressly provided to the contrary in a Recorded instrument signed by Declarant and the applicable Person listed below: (a) Realty Dealers, Ltd., an Illinois limited partnership; (b) UDC-Universal Development, L.P., a Delaware limited partnership doing business in the State of Arizona as UDC Homes Limited Partnership; (c) UDC Corporation, a Delaware corporation; (d) UDC Advisory Services, Inc., an Illinois corporation; (e) any Person controlling, controlled by or under common control with any one or more of Declarant and the Persons listed in paragraphs (a) through (d), inclusive, above; (f) any general or

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limited partnership or joint venture in which any one or more of Declarant and the Persons listed or described in paragraphs (a) through (e), inclusive, above is or are general partner(s) or joint venturer(s); and (g) any trustee of a subdivision or similar trust, the beneficiary of which is any one or more of Declarant and the Persons listed or described in paragraphs (a) through (f), inclusive, above. The purposes for which Lots and other portions of the Property owned by the Persons listed or described above shall be treated as if owned by Declarant shall be as follows: (1) for purposes of determining the number and class of votes attributable to Lots within the Property; (2) for purposes of determining the amounts and commencement dates of Assessments with respect to Lots within the Property; and (3) for purposes of Articles 9 and 10. Absent written agreement to the contrary between Declarant and the applicable Person listed or described in paragraph (a) through (g), inclusive, above, so long as the Class B membership remains in existence, Declarant shall be entitled to cast all Class B votes attributable to Lots or other property owned by such Person(s).

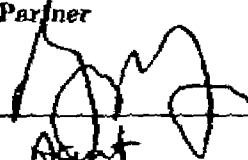
IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the day and year first set forth above.

DECLARANT:

REALTY DEALERS, LTD., an Illinois limited partnership

By UDC ADVISORY SERVICES, INC., an Illinois corporation,
General Partner

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By 
Its Agent

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STATE OF ARIZONA)
) ss.
 County of Maricopa)

On this 30th day of April, 1991, before me, the undersigned officer, personally appeared Gary D. Hahner, who acknowledged himself to be Agent of UDC ADVISORY SERVICES, INC., an Illinois corporation, which is General Partner of REALTY DEALERS, LTD., an Illinois limited partnership, and that he, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said entities by himself.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Phoebe L. McCrith
 Notary Public

My commission expires:



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